

Contract No. 14-06-200-2871A-R1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND
THE CITY OF REDDING,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

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13 PROVIDING FOR PROJECT WATER
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15 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is
16

17 entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the
18 United States, made this _____ day of _____, 2003, pursuant to the
19 applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and
20 acts amendatory or supplementary thereto, including, but not limited to, the Acts of
21 August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat.
22 1187), as amended and supplemented, including but not limited to Sections 9 and 14
23 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96
24 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act
25 of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal
26 Reclamation law, and THE CITY OF REDDING, hereinafter referred to as the
27 Contractor, an incorporated city of the State of California, duly organized, existing, and
28 acting pursuant to the laws thereof, with its principal place of business in California;

29 WITNESSETH, that:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for multiple purposes pursuant to its statutory authority; and

[2nd] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to divert for reasonable beneficial use, water from the natural flow of the Sacramento River and tributaries thereto, that would have been flowing therein if the Central Valley Project were not in existence; and

[3rd] WHEREAS, the construction and operation of the integrated and coordinated Central Valley Project has changed and will further change the regimen of the Sacramento, American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from unregulated flow to regulated flow; and

[4th] WHEREAS, the United States has rights to divert, is diverting, and will continue to divert waters from said Rivers and said Delta in connection with the operation of said Central Valley Project, and

[5th] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 14-06-200-2871A, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant to such contract; and

[6th] WHEREAS, the United States and the Contractor disagree with respect to the authority of the United States to change the quantities of Base Supply and/or Project Water specified as available for diversion in this Settlement Contract from the quantities specified in the Existing Contract, and other issues related thereto. That dispute was the subject of litigation in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.* (Civ. No. S-01-1816 GEB/JFM (E.D. Cal.)), but that litigation was dismissed, without prejudice, pursuant to a stipulation of dismissal filed by the parties thereto on August 29, 2002. Notwithstanding that dismissal, the Contractor and the United States enter into this Settlement Contract to renew the Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of California; and

[7th] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated flow of the said Rivers and the Delta, and to provide for the economical operation of the Central Valley Project by, and the reimbursement to, the United States for expenditures made for said Project;

NOW, THEREFORE, in consideration of the performance of the herein contained provisions, conditions, and covenants, it is agreed as follows:

DEFINITIONS

1. When used herein, unless otherwise expressed or incompatible with the intent hereof, the term:

(a) “Base Supply” shall mean the quantity of Surface Water established in Articles 3 and 5 which may be diverted by the Contractor from the

1 Sacramento River each Year without payment to the United States for such quantities
2 diverted;

3 (b) "Basin-Wide Water Management Plan" shall mean the mutually
4 agreeable Sacramento River Basinwide Water Management Plan, dated _____,
5 developed by Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas
6 Central Mutual Water Company, Pelger Mutual Water Company, Princeton-Codora-
7 Glenn Irrigation District, Provident Irrigation District, Reclamation District 108, Sutter
8 Mutual Water Company, Anderson-Cottonwood Irrigation District, M&T, Inc., Meridian
9 Farms Water Company, Reclamation District 1004 and the U.S. Bureau of Reclamation.

10 (c) "Charges" shall mean the payments for Project Water that the
11 Contractor is required to pay to the United States in addition to the "Rates" specified in
12 this Settlement Contract. The Contracting Officer will, on an annual basis, determine the
13 extent of these Charges. The type and amount of each Charge shall be specified in
14 Exhibit D;

15 (d) "Contract Total" shall mean the sum of the Base Supply and
16 Project Water available for diversion by the Contractor for the Year;

17 (e) "Critical Year" shall mean any Year in which either of the
18 following eventualities exists:

19 (1) The forecasted full natural inflow to Shasta Lake for the
20 current Water Year, as such forecast is made by the United States on or before February
21 15 and reviewed as frequently thereafter as conditions and information warrant, is equal
22 to or less than 3.2 million acre-feet; or

(2) The total accumulated actual deficiencies below 4 million acre-feet in the immediately prior Water Year or series of successive prior Water Years each of which had inflows of less than 4 million acre-feet, together with the forecasted deficiency for the current Water Year, exceed 800,000 acre-feet.

For the purpose of determining a Critical Year, the computation of inflow to Shasta Lake shall be performed in a manner that considers the extent of upstream development above Shasta Lake during the year in question, and shall be used as the full natural flow to Shasta Lake. In the event that major construction has occurred or occurs above Shasta Lake after September 1, 1963 and which has materially altered or alters the regimen of the stream systems contributing to Shasta Lake, the computed inflow to Shasta Lake used to define a Critical Year will, be adjusted to eliminate the effect of such material alterations. After consultation with the State of California, the National Weather Service, and other recognized forecasting agencies, the Contracting Officer will select the forecast to be used and will make the details of it available to the Contractor. The same forecasts used by the United States for the operation of the Project shall be used to make the forecasts hereunder;

(f) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

(g) “Project” shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(h) “Project Water” shall mean all Surface Water diverted or scheduled to be diverted each Year by the Contractor from the Sacramento River which is in excess of the Base Supply. The United States recognizes the right of the Contractor to

1 make arrangements for acquisition of water from projects of others than the United States
2 for delivery through the Sacramento River and tributaries subject to written agreement
3 between Contractor and the United States as to identification of such water which water
4 when so identified shall not be deemed Project Water under this Settlement Contract;

5 (i) "Rates" shall mean the payments for Project Water determined
6 annually by the Contracting Officer in accordance with the then current applicable water
7 ratesetting policies for the Project, as described in subdivision (a) of Article 8 of this
8 Settlement Contract;

9 (j) "Secretary" or "Contracting Officer" shall mean the Secretary of
10 the Interior, a duly appointed successor, or an authorized representative acting pursuant to
11 any authority of the Secretary and through any agency of the Department of the Interior;

12 (j) "Surface Water" shall mean only those waters that are considered
13 as surface water under California law;

14 (k) "Water Year" shall mean the period commencing with October 1
15 of one year and extending through September 30 of the next; and

16 (l) "Year" shall mean a calendar year.

17 TERM OF SETTLEMENT CONTRACT

18 2. (a) This Settlement Contract shall become effective April 1, 2004, and
19 shall remain in effect until and including March 31, 2044: Provided, that under terms and
20 conditions mutually agreeable to the parties hereto, renewals may be made for successive
21 periods not to exceed 40 years each. The terms and conditions of each renewal shall be
22 agreed upon not later than one year prior to the expiration of the then existing Settlement
23 Contract.

(b) With respect to Project Water and the portions of this Settlement Contract pertaining thereto, upon written request by the Contractor of the Secretary made not later than one year prior to the expiration of this Settlement Contract, whenever, account being taken of the amount then credited to the costs of construction of water supply works, the remaining amount of construction costs of water supply work which is properly assignable for ultimate return by the Contractor probably can be repaid to the United States within the term of a contract under subsection 9(c)(1) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions of this Settlement Contract may be converted to a contract under said subsection 9(c)(1) upon terms and conditions mutually agreeable to the United States and the Contractor. The Secretary shall make a determination 10 years after the date of execution of this Settlement Contract, and every five years thereafter, of whether a conversion to a contract under said subsection 9(c)(1) can be accomplished.

WATER TO BE FURNISHED TO CONTRACTOR

3. (a) Subject to the conditions, limitations, and provisions hereinafter expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento River at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B, (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in Exhibit A, or any revision thereof, in accordance with the monthly operating schedule required by Article 3(c) of this Settlement Contract. Eighty-five percent of the water diverted each month during the Year will shall be counted as Base Supply. The remaining fifteen percent of the water diverted each month during the Year shall be counted as Project Water.

1 (b) The Contractor may have acquired rights to divert water from the
2 Sacramento River that were obtained after the date of execution of the Existing Contract,
3 or the Contractor may acquire such rights in the future. All diversions made from the
4 Sacramento River, pursuant to such rights, shall not be considered a part of the quantity
5 of Base Supply and Project Water specified in Exhibit A; Provided, that the quantities
6 diverted pursuant to the above rights shall be identified on the schedule submitted
7 pursuant to Article 3(c) below, and shall not be substituted for any Base Supply or Project
8 Water; Provided, further, that any such identified quantities of other acquired rights may
9 be diverted by the Contractor before incurring any fee pursuant to Article 3(c)(1), below.

10 (c) Before January 1 and before the first day of each month thereafter
11 when a revision is needed, the Contractor shall submit a written schedule to the
12 Contracting Officer indicating the Contract Total to be diverted by the Contractor during
13 each month under this Settlement Contract. The United States shall furnish water to the
14 Contractor in accordance with the monthly operating schedule or any revisions thereof.
15 However, the United States recognizes the need of the Contractor to change from time to
16 time its monthly diversions of water; the Contractor may make such changes, provided:

17 (1) that the Contractor's rate of diversion from the Sacramento
18 River shall not exceed seventy-five (75) cubic feet per second, however, the Contractor
19 shall be entitled to reasonable flexibility in demands based on maximum daily
20 requirements and maximum daily peaks and will cooperate with the Contracting Officer
21 to facilitate United States operations to make this possible.

(2) the total quantity diverted by the City from the Sacramento River annually shall not exceed the Contract Total contained in Exhibit A or any revision thereof.

(d) In the event conditions warrant, the Contracting Officer reserves the right to require the Contractor to submit, at least 72 hours prior to the beginning of each weekly period, its estimate of daily diversion requirements for each such period from the Sacramento River: Provided, however, that changes during any such period may be made upon the giving of 72 hours' notice thereof to the Contracting Officer.

(e) No sale, transfer, exchange, or other disposal of any of the Contract Total designated in Exhibit A or the right to the use thereof for use on land other than that shown on Exhibit B shall be made by the Contractor without first obtaining the written consent of the Contracting Officer. Such consent will not be unreasonably withheld and a decision will be rendered in a timely manner. For short-term actions that will occur within one year or less, the decision will be rendered within 30 days after receipt of a complete written proposal. For long-term actions that will occur in a period longer than one year, the decision will be rendered within 90 days after receipt of a complete written proposal. For a proposal to be deemed complete by the Contracting Officer, it must comply with all provisions required by State and Federal law, including information sufficient to enable the Contracting Officer to comply with the National Environmental Policy Act, the Endangered Species Act, and applicable rules or regulations then in effect; Provided that, such consent does not authorize the use of Federal facilities to facilitate or effectuate the sale, transfer, exchange or other disposal of

1 Base Supply. Such use of Federal facilities will be the subject of a separate agreement to
2 be entered into between the Contractor and Reclamation.

3 (f) For the purpose of determining whether section 3405(a)(1)(M) of
4 the CVPIA applies to the Contractor as a transferor or transferee of Project Water, the
5 Contracting Officer acknowledges that the Contractor is within a county, watershed or
6 other area of origin, as those terms are utilized under California law.

7 (g) The United States assumes no responsibility for and neither it nor
8 its officers, agents, or employees shall have any liability for or on account of:

9 (1) The quality of water to be diverted by the Contractor;

10 (2) The control, carriage, handling, use, disposal, or
11 distribution of water diverted by the Contractor outside the facilities constructed and then
12 being operated and maintained by or on behalf of the United States;

13 (3) Claims of damage of any nature whatsoever, including but
14 not limited to, property loss or damage, personal injury, or death arising out of or
15 connected with the control, carriage, handling, use, disposal, or distribution of said water
16 outside of the hereinabove referred to facilities; and

17 (4) Any damage whether direct or indirect arising out of or in
18 any manner caused by a shortage of water whether such shortage be on account of errors
19 in operation, drought, or unavoidable causes.

20 RETURN FLOW

21 4. Nothing herein shall be construed as an abandonment or a relinquishment
22 by the United States of any right it may have to the use of waste, seepage, and return flow
23 water derived from water diverted by the Contractor hereunder and which escapes or is

1 discharged beyond the boundaries of the lands shown on Exhibit B; Provided, that this
2 shall not be construed as claiming for the United States any right to such water which is
3 recovered by the Contractor pursuant to California law from within the boundaries of the
4 lands shown on Exhibit B, and which is being used pursuant to this Settlement Contract
5 for municipal, industrial or domestic use or underground storage for the benefit of the
6 lands shown on Exhibit B by the Contractor.

7 CONSTRAINTS ON THE AVAILABILITY OF WATER

8 5. (a) In a Critical Year, the Contractor's Base Supply and Project Water
9 agreed to be diverted during the Year shall be reduced by twenty-five percent.

10 (b) The amount of any overpayment by the Contractor shall, at its
11 option, be refunded or credited upon amounts to become due to the United States from
12 the Contractor under the provisions hereof in the ensuing Year. To the extent of such
13 deficiency such adjustment of overpayment shall constitute the sole remedy of the
14 Contractor.

15 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

16 6. The Contractor and United States desire to work together to maximize the
17 reasonable beneficial use of water for their mutual benefit. As a consequence, the United
18 States and the Contractor will work in partnership and with others within the Sacramento
19 Valley, including other Contractors, to facilitate the better integration within the
20 Sacramento Valley of all water supplies including, but not limited to, the better
21 management and integration of surface water and groundwater, the development and
22 better utilization of surface water storage, the effective utilization of waste, seepage and

return flow water, and other operational and management options that may be identified in the future.

USE OF WATER FURNISHED TO CONTRACTOR

7. (a) Project Water furnished to the Contractor pursuant to this Settlement Contract shall not be delivered or furnished by the Contractor for any purposes other than municipal, industrial, and domestic purposes without the written consent of the Contracting Officer.

(b) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the Contractor's legal authority to implement. The Contractor shall comply with the limitations or requirements imposed by environmental documentation applicable to the Contractor and within its legal authority to implement. The Existing Contract, which evidences in excess of 40 years of diversions, for agricultural uses, of the quantities of water provided for in Article 3, and the underlying water rights of the Contractor will be considered in developing an appropriate base-line for the Biological Assessment prepared pursuant to the Endangered Species Act, and in any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

RATE AND METHOD OF PAYMENT FOR WATER

8. (a) The Contractor shall make payments to the United States as provided in this Article for all Project Water shown in Exhibit A as follows:

(1) seventy-five percent of the amount shown as Project Water shall be paid for by the Contractor in each Year; and in addition

(2) the Contractor shall pay for Project Water actually diverted in excess of seventy-five percent of the amount shown as Project Water.

Such payments shall be at Rates and Charges established in accordance with:

(i) the Secretary's then current ratesetting policies for the Project; and (ii) applicable Reclamation law and associated rules and regulations, or policies. The Rates and Charges applicable to the Contractor upon execution of this Settlement Contract are set forth in Exhibit D, as may be revised annually. The Secretary's ratesetting policies for the Project shall be amended, modified, or superseded only through a public notice and comment procedure. The Contracting Officer shall adjust the amount of Project Water for which payment is required to the extent of any reduction in diversions of Project Water made in accordance with the water conservation provisions of Article 29(e).

(b) The Contracting Officer shall notify the Contractor of the Rates and Charges as follows:

(1) Prior to July 1 of each Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Year, through September 30, of the following Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to review and comment on such estimates. On or before September 15 of each

1 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be
2 in effect during the period October 1 of the current Year, through September 30, of the
3 following Year, and such notification shall revise Exhibit D.

4 (2) Prior to October 1 of each Year, the Contracting Officer
5 shall make available to the Contractor an estimate of the Rates for Project Water for the
6 following Year and the computations and cost allocations upon which those Rates are
7 based. The Contractor shall be allowed not less than two months to review and comment
8 on such computations and cost allocations. By December 31 of each Year, the
9 Contracting Officer shall provide the Contractor with the final Rates to be in effect for
10 the upcoming Year, and such notification shall revise Exhibit D.

11 (c) The Contractor shall pay the United States for Project Water in the
12 following manner:

13 (1) With respect to Rates, prior to January 1 of each Year, the
14 Contractor shall pay the United States one-half the total amount payable pursuant to
15 subdivision (a) of this Article and the remainder shall be paid prior to July 1 or such later
16 date or dates as may be specified by the United States in a written notice to the
17 Contractor: Provided, however, that if at any time during the Year the amount of Project
18 Water diverted by the Contractor shall equal the amount for which payment has been
19 made, the Contractor shall pay for the remaining amount of such water as shown in
20 Exhibit A in advance of any further diversion of Project Water.

21 (2) With respect to Charges, the Contractor shall also make a
22 payment to the United States, in addition to the Rate(s) in subdivision (c)(1) of this
23 Article, at the Charges then in effect, before the end of the month following the month of

1 delivery or transfer. The payments shall be consistent with the quantities of Project
2 Water delivered or transferred. Adjustment for overpayment or underpayment of
3 Charges shall be made through the adjustment of payments due to the United States for
4 Charges for the next month. Any amount to be paid for past due payment of Charges
5 shall be computed pursuant to Article 13 of this Settlement Contract.

6 (d) Payments to be made by the Contractor to the United States under
7 this Settlement Contract may be paid from any revenues available to the Contractor.

8 (1) All revenues received by the United States from the
9 Contractor relating to the delivery of Project Water or the delivery of non-Project water
10 through Project facilities shall be allocated and applied in accordance with Federal
11 Reclamation law and the associated rules or regulations, and the then current Project
12 ratesetting policies for Irrigation Water.

13 (e) The Contracting Officer shall keep its accounts pertaining to the
14 administration of the financial terms and conditions of its long-term water service and
15 Settlement Contracts, in accordance with applicable Federal standards, so as to reflect the
16 application of Project costs and revenues. The Contracting Officer shall, each Year upon
17 request of the Contractor, provide to the Contractor a detailed accounting of all Project
18 and Contractor expense allocations, the disposition of all Project and Contractor
19 revenues, and a summary of all water delivery information. The Contracting Officer and
20 the Contractor shall enter into good faith negotiations to resolve any discrepancies or
21 disputes relating to accountings, reports, or information.

22 (f) The parties acknowledge and agree that the efficient administration
23 of this Settlement Contract is their mutual goal. Recognizing that experience has

1 demonstrated that mechanisms, policies, and procedures used for establishing Rates and
2 Charges and/or for making and allocating payments, other than those set forth in this
3 Article may be in the mutual best interest of the parties, it is expressly agreed that the
4 parties may enter into agreements to modify the mechanisms, policies, and procedures for
5 any of those purposes while this Settlement Contract is in effect without amendment of
6 this Settlement-Contract.

7 (g) For the term of this Settlement Contract, Rates under the respective
8 ratesetting policies for the Project will be established to recover only reimbursable
9 operation and maintenance (including any deficits) and capital costs of the Project, as
10 those terms are used in the then current Project ratesetting policies, and interest, where
11 appropriate, except in instances where a minimum Rate is applicable in accordance with
12 the relevant Project ratesetting policy. Proposed changes of significance in practices
13 which implement the ratesetting policies for the Project will not be implemented until the
14 Contracting Officer has provided the Contractor an opportunity to discuss the nature,
15 need, and impact of the proposed change. The Contractor retains all rights to challenge
16 the validity of Rates and Charges imposed pursuant to this Settlement Contract, including
17 but not limited to operation and maintenance expenses and operation and maintenance
18 deficits, in an appropriate administrative or judicial proceeding.

19 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the
20 Rates for Project Water transferred, exchanged, or otherwise disposed of, by the
21 Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the
22 changed costs of delivery (if any) of the transferred, exchanged, or otherwise disposed of
23 Project Water to the transferee's point of delivery in accordance with the then current

1 ratesetting policies for the Project. Except as provided in subsection 3407(d)(2)(A) of the
2 CVPIA, the Charges for Project Water transferred, exchanged, or otherwise disposed of,
3 by the Contractor shall be the Contractor's Charges specified in Exhibit D.

4 (j) Each payment to be made pursuant to subdivisions (a) and (b) of
5 this Article shall be made at the office of the Bureau of Reclamation, Mid-Pacific Region,
6 File No. 11546, P.O. Box 6000, San Francisco, California, 94160-1546, or at such other
7 place as the United States may designate in a written notice to the said Contractor.

8 Payments shall be made by cash transaction, wire, or any other mechanism as may be
9 agreed to in writing by the Contractor and the Contracting Officer. In the event there
10 should be a default in the payment of the amount due, the delinquent payment provisions
11 of Article 13 shall apply. The Contractor shall not be relieved of the whole or any part of
12 its said obligation by, on account of, or notwithstanding, as the case may be:

13 (1) Its failure, refusal, or neglect to divert seventy-five percent
14 of the quantity of Project Water shown on Exhibit A;

15 (2) The default in payment to it by any water user of
16 assessments, tolls, or other charges levied by or owing to said Contractor;

17 (3) Any judicial determination that any assessment, toll, or
18 other charge referred to in subsection 8(c)(2) of this Settlement Contract is irregular,
19 void, or ineffectual; or

20 (4) Any injunctive process enjoining or restraining the
21 Contractor from making or collecting any such assessment, toll, or other charge referred
22 to in subsection 8(c)(2) of this Settlement Contract.

AGREEMENT ON WATER QUANTITIES

9. (a) During the term of this Settlement Contract and any renewals thereof:

(1) It shall constitute full agreement as between the United States and the Contractor as to the quantities of water and the allocation thereof between Base Supply and Project Water which may be diverted by the Contractor from the Sacramento River for beneficial use on the land shown on Exhibit B which said diversion, use, and allocation shall not be disturbed so long as the Contractor shall fulfill all of its obligations hereunder;

(2) Neither party shall claim any right against the other in conflict with the provisions of Article 9(a)(1) hereof.

(b) Nothing herein contained is intended to or does limit rights of the Contractor against others than the United States or of the United States against any person other than the Contractor: Provided, however, that in the event the Contractor, the United States, or any other person shall become a party to a general adjudication of rights to the use of water of the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position of either party hereto or of any other person and the rights of all such persons in respect to the use of such water shall be determined in such proceedings the same as if this Settlement Contract had not been entered into, and if final judgment in any such general adjudication shall determine that the rights of the parties hereto are different from the rights as assumed herein, the parties shall negotiate an amendment to give effect to such judgment. In the event the parties are unable to agree on an appropriate amendment they shall, within 60 days of determining that there is an

1 impasse, employ the services of a neutral mediator, experienced in resolving water rights
2 disputes, to assist in resolving the impasse. The cost of the mediation will be shared
3 equally. A failure to reach agreement on an amendment within 60 days of the end of
4 mediation will cause the immediate termination of this Settlement Contract.

5 (c) In the event that the California State Water Resources Control
6 Board or a court of competent jurisdiction issues a final decision or order modifying the
7 terms and conditions of the water rights of either party to this Settlement Contract in
8 order to impose Bay-Delta water quality obligations, the Contractor and the United States
9 shall promptly meet to determine whether or not to modify any of the terms of this
10 Settlement Contract to comply with the final decision or order, including (but not limited
11 to) to the applicability of the rescheduling charge in Article 3(c)(1) of this Settlement
12 Contract. If within 60 days of the date of the issuance of the final decision or order the
13 parties are not able to reach agreement regarding either the need to modify this
14 Settlement Contract or the manner in which this Settlement Contract is to be modified,
15 the parties shall promptly retain a neutral mediator, experienced in resolving water right
16 disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
17 shared equally. In the event that either of the parties to this Settlement Contract
18 determines that the parties will not be able to develop mutually-agreeable modification(s)
19 to this Settlement Contract even with the assistance of a mediator, either of the parties to
20 this Settlement Contract may attempt to resolve the impasse by seeking appropriate
21 judicial relief including, but not limited to, filing a general adjudication of the rights to
22 the use of water in the Sacramento River system. The foregoing provisions of this sub-
23 article shall only apply to the incremental obligations contained within a final decision or

1 order of the State Water Resources Control Board that reflects a modification to the
2 obligations imposed in State Water Resources Control Board Revised Water Rights
3 Decision 1641 dated March 15, 2000, and its associated 1995 Water Quality Control Plan
4 which, taken together, will be considered the baseline for the application of the
5 provisions of this sub-article.

6 (d) In the event this Settlement Contract terminates, the rights
7 of the parties to thereafter divert and use water shall exist as if this Settlement Contract
8 had not been entered into; and the fact that as a compromise settlement of a controversy
9 as to the respective rights of the parties to divert and use water and the yield of such
10 rights during the term hereof, this Settlement Contract places a limit on the Contract
11 Total to be diverted annually by the Contractor during the Settlement Contract term and
12 segregates it into Base Supply and Project Water shall not jeopardize the rights or
13 position of either party with respect to its water rights or the yield thereof at all times
14 after the Settlement Contract terminates. It is further agreed that the Contractor at all
15 times will first use water to the use of which it is entitled by virtue of its own water
16 rights, and neither the provisions of this Settlement Contract, action taken thereunder, nor
17 payments made thereunder to the United States by the Contractor shall be construed as an
18 admission that any part of the water used by the Contractor during the term of this
19 Settlement Contract was in fact water to which it would not have been entitled under
20 water rights owned by it nor shall receipt of payments thereunder by the United States
21 from the Contractor be construed as an admission that any part of the water used by the
22 Contractor during the term of this Settlement Contract was in fact water to which it
23 would have been entitled under water rights owned by it.

MEASUREMENT OF WATER

10. (a) All water diverted by the Contractor from the Sacramento River will be diverted at the existing point or points of diversion shown on Exhibit A or at such other points as may be mutually agreed upon in writing by the Contracting Officer and the Contractor.

(b) All water diverted from the Sacramento River pursuant to this Settlement Contract will be measured or caused to be measured by the Contractor at each point of diversion with existing equipment or equipment to be installed, operated, and maintained by the Contractor and at the Contractor's expense. The equipment and methods used to make such measurement shall be in accordance with sound engineering practices. Upon request of the Contracting Officer, the accuracy of such measurements will be investigated by the Contracting Officer and the Contractor and any errors appearing therein will be corrected.

(c) The right of ingress to and egress from all points of diversion is hereby granted to all authorized employees of the United States.

(d) Contractor and Contracting Officer shall develop a mutually agreeable surface water delivery water measurement program which shall be implemented by the Contractor, and such measurement program shall be consistent with the conservation and efficiency criteria for evaluating water conservation plans as provided in Article 29(a).

(e) All new surface water delivery systems installed within the lands delineated on Exhibit B after the effective date of this Settlement Contract shall also comply with the measurement provisions described in this Article.

1 charge rate shall be determined as of the due date and remain fixed for the duration of the
2 delinquent period.

3
4 (c) When a partial payment on a delinquent account is received, the
5 amount received shall be applied, first to the penalty, second to the administrative
6 charges, third to the accrued interest, and finally to the overdue payment.

7
8 QUALITY OF WATER

9 14. The operation and maintenance of Project facilities shall be performed in
10 such manner as is practicable to maintain the quality of raw water made available through
11 such facilities at the highest level reasonably attainable as determined by the Contracting
12 Officer. The United States does not warrant the quality of water and is under no
13 obligation to construct or furnish water treatment facilities to maintain or better the
14 quality of water.

15 WATER AND AIR POLLUTION CONTROL

16 15. The Contractor, in carrying out this Settlement Contract, shall comply
17 with all applicable water and air pollution laws and regulations of the United States and
18 the State of California, and shall obtain all required permits or licenses from the
19 appropriate Federal, State, or local authorities.

20 EQUAL OPPORTUNITY

21 16. During the performance of this Settlement Contract, the Contractor agrees
22 as follows:

23
24 (a) The Contractor will not discriminate against any employee or
25 applicant for employment because of race, color, religion, sex, or national origin. The
26 Contractor will take affirmative action to ensure that applicants are employed, and that
27 employees are treated during employment, without regard to their race, color, religion,
28 sex, or national origin. Such action shall include, but not be limited to, the following:
29 Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
30 layoff or termination, rates of payment or other forms of compensation; and selection for
31 training, including apprenticeship. The Contractor agrees to post in conspicuous places,
32 available to employees and applicants for employment, notices to be provided by the
33 Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Settlement Contract or with any of the said rules, regulations, or orders, this Settlement Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

1 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

2
3 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act
4 of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112,
5 as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other
6 applicable civil rights laws, as well as with their respective implementing regulations and
7 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
8

9 (b) These statutes require that no person in the United States shall, on
10 the grounds of race, color, national origin, handicap, or age, be excluded from
11 participation in, be denied the benefits of, or be otherwise subjected to discrimination
12 under any program or activity receiving financial assistance from the Bureau of
13 Reclamation. By executing this Settlement Contract, the Contractor agrees to
14 immediately take any measures necessary to implement this obligation, including
15 permitting officials of the United States to inspect premises, programs, and documents.
16

17 (c) The Contractor makes this agreement in consideration of and for
18 the purpose of obtaining any and all Federal grants, loans, contracts, property discounts,
19 or other Federal financial assistance extended after the date hereof to the Contractor by
20 the Bureau of Reclamation, including installment payments after such date on account of
21 arrangements for Federal financial assistance which were approved before such date.
22 The Contractor recognizes and agrees that such Federal assistance will be extended in
23 reliance on the representations and agreements made in this Article, and that the United
24 States reserves the right to seek judicial enforcement thereof.
25

26 MINGLING OF CONTRACTOR'S PROJECT AND NON-PROJECT WATER

27 18. Omitted.

28 BOOKS, RECORDS, AND REPORTS

29 19. The Contractor shall establish and maintain accounts and other books and
30 records pertaining to administration of the terms and conditions of this Settlement
31 Contract, including: the Contractor's financial transactions, water supply data, and
32 Project land and right-of-way agreements; water use data; and other matters that the
33 Contracting Officer may require. Reports thereon shall be furnished to the Contracting
34 Officer in such form and on such date or dates as the Contracting Officer may require.
35 Subject to applicable Federal laws and regulations, each party to this Settlement Contract
36 shall have the right during office hours to examine and make copies of each other's books
37 and official records relating to matters covered by this Settlement Contract.
38

39 CHANGE OF PLACE OF USE OR ORGANIZATION

40 20. (a) Unless the written consent of the United States is first obtained no
41 change shall be made in the place of water use shown on Exhibit B.

(b) While this Settlement Contract is in effect, no change shall be made in the area of the Contractor as shown on its Exhibit B, by inclusion, exclusion, annexation or detachment of lands, by dissolution, consolidation, or merger or otherwise, except upon the Contracting Officer's written consent thereto. Such consent will not be unreasonably withheld and a decision will be provided in a timely manner.

(c) In the event lands are annexed to or detached from the area of the Contractor, as provided herein, the quantity of Project Water to be diverted may be increased or decreased, as may be appropriate, pursuant to a supplemental agreement to be executed in respect thereto.

CONSOLIDATION OF CONTRACTING ENTITIES

21. Consolidation of Contractors may be approved by the Contracting Officer provided: (i) the Contracting Officer approves the form and organization of the resulting entity and the utilization by it of the Contract Total; and (ii) the obligations of the Contractors are assumed by such entity.

No such consolidation shall be valid unless and until approved by the Contracting Officer.

NOTICES

22. Any notice, demand, or request authorized or required by this Settlement Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation, 16349 Shasta Dam Blvd., Shasta Lake, California, 96019, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Council of the City of Redding, 777 Cypress Avenue, Redding, California, 96001. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

1 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

2
3 23. (a) The provisions of this Settlement Contract shall apply to and bind
4 the successors and assigns of the parties hereto, but no assignment or transfer of this
5 Settlement Contract or any right or interest therein shall be valid until approved in writing
6 by the Contracting Officer.

7
8 (b) The assignment of any right or interest in this Settlement Contract
9 by either party shall not interfere with the rights or obligations of the other party to this
10 Settlement Contract absent the written concurrence of said other party.

11
12 (c) The Contracting Officer shall not unreasonably condition or
13 withhold his approval of any proposed assignment.

14
15 OFFICIALS NOT TO BENEFIT

16
17 24. (a) No Member of or Delegate to Congress, Resident Commissioner,
18 or official of the Contractor shall benefit from this Settlement Contract other than as a
19 water user or landowner in the same manner as other water users or landowners.

20
21 (b) No officer or member of the governing board of the Contractor
22 shall receive any benefit that may arise by reason of this Settlement Contract other than
23 as a landowner within the Contractor's service area and in the same manner as other
24 landowners within the said service area.

25
26 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

27
28 25. The expenditure or advance of any money or the performance of any
29 obligation of the United States under this Settlement Contract shall be contingent upon
30 appropriation or allotment of funds. Absence of appropriation or allotment of funds shall
31 not relieve the Contractor from any obligations under this Settlement Contract. No
32 liability shall accrue to the United States in case funds are not appropriated or allotted.

33
34 CONFIRMATION OF SETTLEMENT CONTRACT

35 26. The Contractor, after the execution of this Settlement Contract, shall
36 promptly seek to secure a decree of a court of competent jurisdiction of the State of
37 California, if appropriate, confirming the execution of this Settlement Contract. The
38 Contractor shall furnish the United States a certified copy of the final decree, the
39 validation proceedings, and all pertinent supporting records of the court approving and
40 confirming this Settlement Contract, and decreeing and adjudging it to be lawful, valid,
41 and binding on the Contractor. This Settlement Contract shall not be binding on the
42 United States until such final decree has been secured.

1 UNAVOIDABLE GROUNDWATER PERCOLATION

2 27. Omitted.

3 PRIVACY ACT COMPLIANCE

4
5 28. Omitted.

6 WATER CONSERVATION

7
8 29. (a) Prior to the diversion of Project Water, the Contractor shall be
9 implementing an effective water conservation and efficiency program based on the
10 Basin-Wide Water Management Plan and/or Contractor's water conservation plan that
11 has been determined by the Contracting Officer to meet the conservation and efficiency
12 criteria for evaluating water conservation plans established under Federal law. The water
13 conservation and efficiency program shall contain definite water conservation objectives,
14 appropriate economically feasible water conservation measures, and time schedules for
15 meeting those objectives. Continued diversion of Project Water pursuant to this
16 Settlement Contract shall be contingent upon the Contractor's continued implementation
17 of such water conservation program. In the event the Contractor's water conservation
18 plan or any revised water conservation plan completed pursuant to subdivision (c) of
19 Article 29 of this Settlement Contract have not yet been determined by the Contracting
20 Officer to meet such criteria, due to circumstances which the Contracting Officer
21 determines are beyond the control of the Contractor, Project Water deliveries shall be
22 made under this Settlement Contract so long as the Contractor diligently works with the
23 Contracting Officer to obtain such determination at the earliest practicable date, and
24 thereafter the Contractor immediately begins implementing its water conservation and
25 efficiency program in accordance with the time schedules therein.

1 (b) The Contractor shall submit to the Contracting Officer a report on
2 the status of its implementation of the water conservation plan on the reporting dates
3 specified in the then existing conservation and efficiency criteria established under
4 Federal law.

5 (c) At five year intervals, the Contractor shall revise its water
6 conservation plan to reflect the then current conservation and efficiency criteria for
7 evaluating water conservation plans established under Federal law and submit such
8 revised water management plan to the Contracting Officer for review and evaluation.
9 The Contracting Officer will then determine if the water conservation plan meets
10 Reclamation's then current conservation and efficiency criteria for evaluating water
11 conservation plans established under Federal law.

12 (d) If the Contractor is engaged in direct ground-water recharge, such
13 activity shall be described in the Contractor's water conservation plan.

14 (e) In order to provide incentives for water conservation, the
15 Contractor may reduce the amount of Project Water for which payment is required under
16 Article 8(a) in accordance with the provisions of this Article 29(e).

17 (1) On or before February 15 of any Water Year, the
18 Contractor may file with Reclamation an offer to reduce Project Water use, hereinafter
19 referred to as Offer. The Offer shall specify the maximum quantity of Project Water to
20 be diverted by the Contractor for each month that Project Water is available for that
21 Water Year under this Settlement Contract. The Contracting Officer shall provide the
22 Contractor with a decision, in writing, to the Offer on or before March 15 of that Water

1 Year. The dates specified in this Article 29(e)(1) can be changed if mutually agreed to, in
2 writing, by the Contractor and Contracting Officer.

3 (2) If Reclamation accepts the Offer, the Contractor's payment
4 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project
5 Water to be diverted by the Contractor as specified in the Offer. The Contractor shall not
6 divert Project Water in excess of the quantities set forth in the Offer: Provided, however,
7 if the Contractor's diversions of Project Water exceed the quantities set forth in the Offer,
8 the Contractor shall pay to Reclamation the applicable Rates and Charges plus an amount
9 equal to the applicable Rates and Charges for each acre-foot of Project Water diverted in
10 excess of the quantities set forth in the Offer.

11 (3) If Reclamation decides not to accept the Offer, the
12 Contractor's payment obligation will remain as specified in Article 8(a)(1).

13 (4) The provisions of this Article 29(e) shall be in addition to
14 and shall not affect the provisions of Article 3(e) pertaining to the sale, transfer, exchange
15 or other disposal of the Contract Total designated in Exhibit A.

16 OPINIONS AND DETERMINATIONS

17
18 30. (a) Where the terms of this Settlement Contract provide for actions to
19 be based upon the opinion or determination of either party to this Settlement Contract,
20 said terms shall not be construed as permitting such action to be predicated upon
21 arbitrary, capricious, or unreasonable opinions or determinations. Both parties,
22 notwithstanding any other provisions of this Settlement Contract, expressly reserve the
23 right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
24 unreasonable opinion or determination. Each opinion or determination by either party

1 shall be provided in a timely manner. Nothing in subdivision (a) of Article 30 of this
2 Settlement Contract is intended to or shall affect or alter the standard of judicial review
3 applicable under Federal law to any opinion or determination implementing a specific
4 provision of Federal law embodied in statute or regulation.

5 (b) The Contracting Officer shall have the right to make
6 determinations necessary to administer this Settlement Contract that are consistent with
7 the provisions of this Settlement Contract, the laws of the United States and of the State
8 of California, and the rules and regulations promulgated by the Secretary of the Interior.
9 Such determinations shall be made in consultation with the Contractor to the extent
10 reasonably practicable.

11 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

12 31. (a) In addition to all other payments to be made by the Contractor
13 pursuant to this Settlement Contract, the Contractor shall pay to the United States, within
14 60 days after receipt of a bill and detailed statement submitted by the Contracting Officer
15 to the Contractor for such specific items of direct cost incurred by the United States for
16 work requested by the Contractor associated with this Settlement Contract plus indirect
17 costs in accordance with applicable Bureau of Reclamation policies and procedures. All
18 such amounts referred to in this Article shall not exceed the amount agreed to in writing
19 in advance by the Contractor. This Article shall not apply to costs for routine contract
20 administration.

21 (b) All advances for miscellaneous costs incurred for work requested
22 by the Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to
23 reflect the actual costs when the work has been completed. If the advances exceed the

1 actual costs incurred, the difference will be refunded to the Contractor. If the actual costs
2 exceed the Contractor's advances, the Contractor will be billed for the additional costs
3 pursuant to Article 31 of this Settlement Contract.

4 WAIVER OF DEFAULT

5 32. The waiver by either party to this Settlement Contract as to any default
6 shall not be construed as a waiver of any other default or as authority of the other party to
7 continue such default or to make, do, or perform, or not to make, do, or perform, as the
8 case may be, any act or thing which would constitute a default.

Secretary

Exhibit A

City of Redding
Contract No. 14-06-200-2871A-R1
Sacramento River

SCHEDULE OF WATER REQUIREMENTS

	<u>Base Supply</u>	<u>Project Water</u>	<u>Contract Total</u>
	(acre-feet)	(acre-feet)	(acre-feet)
Year	<u>17,850</u>	<u>3,150</u>	<u>21,000</u>

Points of Diversion: 246.7R, 246.25L

Dated:

1
2
3
4
5
6

Exhibit B
(Map to be inserted to identify area covered by contract)

City of Redding
Contract No. 14-06-200-2871A-R1
Sacramento River

Exhibit C

City of Redding

Contract No. 14-06-200-2871A-R1

Sacramento River

UNIT DUTY

OMITTED (Not Applicable to M&I contract)

Exhibit D

City of Redding
 Contract No. 14-06-200-2871A-R1
 Sacramento River

WATER RATES AND CHARGES

Note: Rates and Charges shown are 2003 rates. This exhibit will be updated prior to execution of the contract to reflect the Rates and Charges for 2004.

COST OF SERVICE RATES: Per Acre-Foot

Capital Rates	
Storage	\$9.31
O&M Rates:	
Water Marketing	\$3.68
Storage	\$5.78
Deficit Rates:	
Interest Bearing	\$1.57
CFO/PFR Adjustment Rate 1/	<u>\$2.77</u>
TOTAL	<u>\$23.11</u>

CHARGES UNDER P.L. 102-575 TO THE
 RESTORATION FUND 2/

Restoration Payments (3407(d)(2)(A))	<u>\$15.38</u>
--------------------------------------	----------------

1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

2/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1 - 9/30).